



ICTR-05-89-I

03-10-2011
(87-70)

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

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Before: The Trial Chamber Designated Under Rule 11 *bis* (A)

Registrar: Adama Dieng

Date filed: 3 October 2011

THE PROSECUTOR

v.

BERNARD MUNYAGISHARI

Case No. ICTR-2005-89-I

JUDICIAL RECORDS ARCHIVES
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**PROSECUTOR'S REQUEST FOR THE REFERRAL OF THE
CASE OF BERNARD MUNYAGISHARI TO RWANDA
PURSUANT RULE 11 *BIS* OF THE RULES OF PROCEDURE
AND EVIDENCE**

Office of the Prosecutor

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NATURE OF THE APPLICATION

1. The Prosecutor files this application pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence (“Rules”) seeking orders for the referral of the indictment and case of *Bernard Munyagishari* (“the Accused”) to the competent authorities of the Republic of Rwanda (“Rwanda”) for trial.

RELEVANT PROCEDURAL BACKGROUND

2. The Indictment against the Accused was confirmed by the Tribunal on 8 September 2005 and charges the Accused with conspiracy to commit genocide; genocide or, in the alternative, complicity in genocide; murder as a crime against humanity; and rape as a crime against humanity. A copy of the Indictment is attached hereto as **Annex A**.

3. The Accused was arrested, pursuant to a warrant issued by the Tribunal, on 25 May 2011 in the Democratic Republic of the Congo. On 14 June 2011, he was transferred to the United Nations Detention Facility in Arusha and is currently awaiting trial.

GROUND FOR THE APPLICATION

4. By this application, the Prosecutor requests the President of the Tribunal, pursuant to Rule 11 *bis* (A), to designate a Trial Chamber to hear and determine, on the grounds set out below, whether the case should be referred to the Republic of Rwanda for trial. The Prosecutor’s application is based on the following grounds:

- a. The crimes alleged in the indictment were committed in Rwanda, and Rwanda has personal jurisdiction (*rationae personae*) over the accused.
- b. Rwanda has subject matter jurisdiction (*rationae materiae*) over the crimes alleged in the indictment and has the institutional framework, willingness and ability to try the case.
- c. The Accused will receive a fair trial in Rwanda and, if convicted, would not be sentenced to death.

5. The Prosecutor shall, subject to a scheduling order of the Trial Chamber designated to hear this matter, file a detailed brief in support of this application.

RELIEF SOUGHT

6. For the foregoing reasons, the Prosecutor requests that:
- a. the President of the Tribunal designate a Trial Chamber, pursuant to Rule 11 *bis* (A) to hear and determine this application;
 - b. the designated Trial Chamber issue a Scheduling Order for the filing of briefs by the parties and any *amicus curiae*;
 - c. the designated Trial Chamber grant an opportunity to the authorities of the Republic of Rwanda to be heard in this matter; and
 - d. the designated Trial Chamber grant referral of the case to Rwanda as requested herein and issue the following orders:
 - (i) an Order referring this case to the authorities of the Republic of Rwanda for so that they may forthwith assign it to the High Court of Rwanda for trial; and
 - (ii) an Order that protective measures for witnesses, issued by the Tribunal upon confirmation of the indictment, remain in force and apply *mutatis mutandis* in Rwanda, unless otherwise revoked or varied.

Dated at Arusha, Tanzania this 3rd day of October 2011



Hassan Bubacar Jallow
Prosecutor

(52-38)

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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-2005-89-1

THE PROSECUTOR

AGAINST

BERNARD MUNYAGISHARI

INDICTMENT

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I. The Prosecutor of the International Criminal for Rwanda (the "Prosecutor"), pursuant to the authority stipulated in Article 17 of the Statute of the International Criminal Tribunal for Rwanda (the "Statute") charges:

BERNARD MUNYAGISHARI

With:

- Count 1: **CONSPIRACY TO COMMIT GENOCIDE**, pursuant to Articles 2(3)(b) and 6(1) of the Statute;
- Count 2: **GENOCIDE**, pursuant to Articles 2(3)(a), 6(1) and 6(3) of the Statute; or alternatively,
- Count 3: **COMPLICITY IN GENOCIDE**, pursuant to Articles 2(3)(e), 6(1) and 6(3) of the Statute;
- Count 4: **MURDER AS A CRIME AGAINST HUMANITY**, pursuant to Articles 3(a), 6(1) and 6(3) of the Statute; and,
- Count 5: **RAPE AS A CRIME AGAINST HUMANITY**, pursuant to Articles 3(g), 6(1) and 6(3) of the Statute.

II. THE ACCUSED

1. **Bernard Munyagishari** was born in 1959 in Gisenyi *secteur*, Rubavu *commune*, Gisenyi *prefecture*, Rwanda.
2. **Bernard Munyagishari** was at various times a school teacher and a national football referee. After the multi party political system was adopted in Rwanda in 1991, **Bernard Munyagishari** was employed by the Insurance Company SONARWA in Gisenyi city as a reward for his active participation in the MRND (National Republican Movement for Democracy and Development) political party at the local level. He served as Secretary General of the MRND political party for Gisenyi city and as President of the *Interahamwe* for Gisenyi *prefecture* for the period from 1992 through 1994. The *Interahamwe* was officially the youth wing of the MRND.
3. As Secretary General of the MRND for Gisenyi city and President of the *Interahamwe* for Gisenyi *prefecture*, **Bernard Munyagishari** recruited many *Interahamwe* for his political party. **Bernard Munyagishari**, Major François-Xavier Uwimana, one Rukara and others, provided military-like training for the *Interahamwe* and distributed weapons to them.

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4. As Secretary General of the MRND for Gisenyi city and President of the *Interahamwe* for Gisenyi *prefecture*, **Bernard Munyagishari** exercised effective control and authority over the members of the *Interahamwe* and the *Impuzamugambi* militias in Gisenyi and its environs.

5. On or about 6 April 1994, and on other occasions from that period through 17 July 1994, **Bernard Munyagishari** was seen armed with a pistol, a Kalashnikov and a club.

III. CHARGES AND CONCISE STATEMENT OF FACTS

6. At all times referred to in this indictment, there existed in Rwanda a minority ethnic or racial group known as Tutsis, officially identified as such by the government. The majority of the population was comprised of an ethnic or racial group known as Hutus, also officially identified as such by the Government.

7. Throughout Rwanda during the course of 1994, particularly between 6 April 1994 and 17 July 1994, soldiers, *Interahamwe* militia and armed civilians, targeted and attacked Tutsis on the basis that they were Tutsis, with the intent to kill or cause serious harm to them as such and to destroy the Tutsi population in Rwanda in whole or in part. Hundreds of thousands of civilian Tutsis were killed by the *Interahamwe* and other armed civil populations.

COUNT 1: CONSPIRACY TO COMMIT GENOCIDE

The Prosecutor charges **Bernard Munyagishari** with **CONSPIRACY TO COMMIT GENOCIDE**, a crime stipulated in Article 2 (3) (b) of the Statute, in that on or between the dates of 1 January 1994 and 17 July 1994, in Gisenyi *prefecture*, Rwanda, **Bernard Munyagishari** did agree with others, namely members of the Rwandan Government, the MRND leaders, the Rwandan Armed Forces and the *Interahamwe* militia, including but not limited to influential and powerful persons such as Colonel Anatole Nsengiyumva, Joseph Nzirorera, Augustin Ndirabatware, Mbanzi Wellars, Juvénal Uwilingiyimana, Barnabé Samvura, Thomas Mugiraneza, Omar Serushago and others, to kill or cause serious bodily or mental harm to the members of the Tutsi population of Rwanda, with the intent to destroy, in whole or in part, a racial or ethnic group, as such, as outlined in paragraphs 8 through 22 of this indictment.

CONCISE STATEMENT OF FACTS FOR COUNT 1

Individual Criminal Responsibility

8. Pursuant to Article 6(1) of the Statute, the accused, **Bernard Munyagishari**, is individually responsible for the crime of **CONSPIRACY TO COMMIT GENOCIDE** because he committed the act of agreeing with Colonel Anatole Nsengiyumva, Joseph

Nzirorera, Augustin Ngirabatware, Mbanzi Wellars, Juvénal Uwilingiyimana, Barnabé Samvura, Thomas Mugiraneza, Omar Serushago and others, on a plan to destroy in whole or in part, the Tutsi ethnic group, as described in paragraphs 9 through 22 of this indictment. In furtherance of this plan, he personally committed, ordered, instigated or aided and abetted specific acts that facilitated the destruction of the Tutsis, such actions taking place between an unknown date in early 1992 and 17 July 1994. The particulars that give rise to his individual criminal responsibility are set forth in paragraphs 9 through 22 of this indictment.

9. After the multi party political system was adopted in Rwanda in 1991, **Bernard Munyagishari**, in his capacity of Secretary General of the MRND for Gisenyi city, recruited many young people to the youth wing of the MRND known as the *Interahamwe*. These persons were almost exclusively of Hutu ethnic origin. The role of the *Interahamwe* in Gisenyi was to create disorder in the opposition political rallies and to attack and kill the Tutsis and the Hutu opponents of ethnic division who were accused of being accomplices of the *Inkotanyi*, the Rwandan Patriotic Front combatants ("the RPF").

10. On an unknown date in 1992, **Bernard Munyagishari** agreed with influential persons to create five main *Interahamwe* militia groups in Gisenyi to attack and kill Tutsis and Hutu Opponents of ethnic division. **Bernard Munyagishari** was appointed President of the *Interahamwe* militia for Gisenyi *prefecture* and accepted the position knowing the criminal role of the *Interahamwe*. Thomas Mugiraneza was his vice-president. **Bernard Munyagishari** personally led one of the groups, while the remaining four were managed under his leadership, by Omar Serushago, Thomas Issa, Hassan Sibomana and one Mabuye .

11. **Bernard Munyagishari** was trained as commando by Major François-Xavier Uwimana in the Bigogwe military camp in furtherance of the agreement described herein. **Bernard Munyagishari** often was armed and sometimes wore a military uniform, but he never became an official member of the Rwandan Armed Forces.

12. During the period from 1992 and up until the death of President Juvenal Habyarimana on 6 April 1994, in furtherance of the agreement described herein, **Bernard Munyagishari** trained the *Interahamwe* militia. The training enabled the *Interahamwe* more efficiently to attack and kill the Tutsis and the Hutu opponents with the weapons they were given by the soldiers.

13. In December 1993, **Bernard Munyagishari** and other *Interahamwe* leaders attended a meeting held at Meridien Hotel in Gisenyi to organize the killing campaign. The meeting was convened by Joseph Nzirorera and Juvénal Uwilingiyimana. During the meeting, the participants, including **Bernard Munyagishari**, agreed that weapons must be distributed to the *Interahamwe* to kill the Tutsis. **Bernard Munyagishari** was in charge of briefing the *Interahamwe* on the purpose of distributing weapons to them.

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14. On several occasions prior to 7 April 1994, the Minister of Planning, Augustin Ndirabatware, nicknamed Mbiyo Mbiyo, held meetings with **Bernard Munyagishari** and the *Interahamwe* at the MRND Secretarial Office in Gisenyi. The participants, including **Bernard Munyagishari**, agreed that no one of Tutsi ethnic origin be allowed to attend the meetings. The participants, including **Bernard Munyagishari**, further agreed to kill the Tutsis. After most of those meetings, **Bernard Munyagishari** and Minister Augustin Ndirabatware hired buses from the transportation company ONATRACOM in Gisenyi, to convey the *Interahamwe* to the communes to look for Tutsis whom they killed.

15. On or about 5 April 1994, in furtherance of the agreement described herein, *Interahamwe* led by **Bernard Munyagishari** began spreading false rumours in Gisenyi that the Tutsis had put poison in the water so that those who would drink that water, namely the Hutus, died. This was done with the intention of causing tensions among the population so that the population would see the Tutsis as the enemy. As a result, the *Interahamwe* threatened to kill the Tutsis.

16. On or about 10 January 1994, an *Interahamwe* leader nicknamed Jean-Pierre, informed UNAMIR (United Nations Assistance Mission for Rwanda) in Kigali that the MRND leaders and members of the *Interahamwe* cells, including Jean-Pierre himself, had prepared lists of Tutsis to be eliminated. The lists contained the names and the residences of the Tutsis to be killed. The lists were also given to other authorities and *Interahamwe* leaders in the country, including Gisenyi where **Bernard Munyagishari** and Barnabe Samvura received them. After the death of President Juvenal Habyarimana, on several unknown days including one in May 1994, **Bernard Munyagishari** organized his *Interahamwe* to search homes of Tutsis to be killed. There were *Interahamwe* who were assigned to search Tutsis' houses by day, and those who were assigned to search Tutsis' houses by night **Bernard Munyagishari** himself led a group of *Interahamwe* to homes of prominent Tutsis to be killed. **Bernard Munyagishari** also ordered his *Interahamwe* to some specific houses where Tutsi families were living to capture these Tutsis. Some of the Tutsis captured were killed by the *Interahamwe*.

17. During March 1994, the Rwanda Government was under pressure to implement the Arusha Accords, **Bernard Munyagishari** organized, on several occasions in Gisenyi, violent protests against the Arusha Accords and masterminded a virulent hate campaign against the Tutsis in furtherance of the agreement described herein. **Bernard Munyagishari** and his *Interahamwe* mounted roadblocks in Gisenyi to show their disapproval and anger in relation to the ongoing negotiations in Arusha. They arrested Tutsis at the roadblocks and assaulted them. During the demonstrations, **Bernard Munyagishari** and his *Interahamwe* also looted Tutsi homes and destroyed Tutsi property.

18. On or about 7 April 1994, in order to organize the commencement of the extermination plan against the Tutsis, Colonel Antole Nsengiyumva convened a meeting of political leaders, local authorities and *Interahamwe* at the military camp in Gisenyi.

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Among those present at the meeting were **Bernard Munyagishari**, Barnabe Samvura, chairman of the CDR for Rubavu commune, and Thomas Mugiraneza, Vice-President of the *Interahamwe* for Gisenyi prefecture. The participants, including **Bernard Munyagishari**, discussed details of the plan to exterminate the Tutsis and agreed during the course of the meeting to distribute weapons to be used to exterminate the Tutsis.

19. At the end of the meeting held on or about 7 April 1994, in furtherance of the agreement described herein, Colonel Anatole Nsengiyumva ordered Captain Bizuremuye, Commander of the mobile brigade of Gisenyi, to distribute weapons and ammunitions to the *Interahamwe* leaders who were present. The weapons, including grenades and rifles, were in turn distributed to the *Interahamwe* who immediately commenced attacks on Tutsis. **Bernard Munyagishari** agreed with others to participate in the distribution of weapons to the *Interahamwe* knowing that such weapons would be used in carrying out attacks on Tutsis.

20. On an unknown date in April 1994, **Bernard Munyagishari** attended a meeting at the stadium in Gisenyi, convened by Colonel Anatole Nsengiyumva. During the meeting, the participants discussed whether or not the killings of Tutsis should be stopped. **Bernard Munyagishari** agreed with Colonel Anatole Nsengiyumva and others not to stop the killings in Gisenyi. **Bernard Munyagishari** and the *Interahamwe* attending the meeting endorsed their approval of Colonel Anatole Nsengiyumva who said to the killers that he did not agree with the first two speakers who had called for the end of the massacres. Colonel Anatole Nsengiyumva congratulated the *Interahamwe* for what he called "good work" and encouraged them to continue the "work". In that context, "work" meant killing the Tutsis. **Bernard Munyagishari** agreed with Colonel Anatole Nsengiyumva and others that the killing of Tutsis should continue and after the meeting the killing of the Tutsis became more and more intense in Gisenyi.

21. From 7 April 1994 through 17 July 1994, in furtherance of the agreement described herein, **Bernard Munyagishari** supervised the roadblocks in the city of Gisenyi and its environs. He was present at many roadblocks including the one leading to Bralirwa Company in Gisenyi, ordering the *Interahamwe* and instigating other civilians to kill the Tutsis. During the same period, the *Interahamwe* led by **Bernard Munyagishari** killed many Tutsis at roadblocks in Gisenyi.

22. On an unknown date in May 1994, **Bernard Munyagishari** convened a meeting in the stadium of Gisenyi. He agreed with the other participants that no Tutsi be allowed in the meeting. **Bernard Munyagishari** further agreed with the other participants to define the enemy of the Hutus. He said during his speech that the time had come to know who was their real enemy and called the participants to deal with this enemy quickly and without mercy. For **Bernard Munyagishari** and the participants at the meeting, it was clear that the enemy was the Tutsi. Immediately after the meeting, the *Interahamwe* started going from house to house searching for Tutsis and killed them. There were some *Interahamwe* who would search Tutsis' houses by day and others who would search Tutsis' houses by night.

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COUNT 2: GENOCIDE

The Prosecutor charges **Bernard Munyagishari** with **GENOCIDE**, a crime stipulated in Article 2(3)(a), of the Statute in that on or between the dates of 7 April 1994 and 17 July 1994 in Gisenyi *prefecture*, Rwanda, **Bernard Munyagishari** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population, including rape and other acts of sexual violence, with intent to destroy, in whole or in part, a racial or ethnic group as such, as outlined in paragraphs 23 through 42 of this indictment.

OR ALTERNATIVELY

COUNT 3: COMPLICITY IN GENOCIDE

The Prosecutor charges **Bernard Munyagishari** with **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e) of the Statute, in that on or between the dates of 7 April 1994 and 17 July 1994 in Gisenyi *prefecture*, Rwanda, **Bernard Munyagishari** was responsible for the killing or causing serious bodily or mental harm to members of the Tutsi population, including rape and other acts of sexual violence, with knowledge that others intended to destroy, in whole or in part, a racial or ethnic, group as such, and that his assistance would contribute to the crime of genocide, as outlined in paragraphs 23 through 42 of this indictment.

CONCISE STATEMENTS OF FACTS FOR COUNTS 2 AND 3

Individual Criminal Responsibility

23. Pursuant to Article 6(1) of the Statute, the accused, **Bernard Munyagishari** is responsible for the crime of genocide or complicity in genocide because he planned, ordered those over whom he had authority by reason of his position described in paragraphs 2 through 4 of the indictment, instigated those over whom he did not have authority, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. In addition, the accused willfully and knowingly participated in a joint criminal enterprise whose object, purpose and foreseeable outcome was the destruction of the Tutsi racial or ethnic group in Gisenyi *prefecture*. To fulfill this criminal purpose, the accused acted with *Interahamwe* such as Omar Serushago, Thomas Mugiraneza, Bernard Samvura, Bagungo Augustin, Zainabou also known as Zainabu Mukundufite Faiziri and other participants, all such actions being taken either directly or through co-perpetrators, for at least the period of 1 January 1994 through 17 July 1994. The particulars that give rise to his individual criminal responsibility are set forth paragraphs 24 through 33 of this indictment.

24. After the establishment of roadblocks in Gisenyi and its environs on an unknown date in April 1994, **Bernard Munyagishari** personally supervised the roadblocks located in the central area of Gisenyi and those leading from Nyundo into Gisenyi and the one leading to Bralirwa Company. **Bernard Munyagishari** further assigned to Omar Serushago the supervision of the very strategic roadblock "*La Corniche*". "*La Corniche*" was located on the main road leading to the border with Zaire (now

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Democratic Republic of Congo) between Lake Kivu and Gisenyi city, and prevented the Tutsis from fleeing to Zaire to seek refuge. At the roadblocks that **Bernard Munyagishari** supervised, the *Interahamwe* of the accused checked identity cards, selected Tutsis and took them to "*Commune Rouge*" where they killed and buried them. The "*Commune Rouge*" was an infamous cemetery in Gisenyi and the adjective "*rouge*" (red) recalled the colour of the blood of those who were killed and buried there. Members of the *Interahamwe* who were co-perpetrators in the joint criminal enterprise killed the Tutsis who were sent to "*Commune Rouge*".

25. During the events referred to in this indictment, in the period from 7 April 1994 to 17 July 1994, **Bernard Munyagishari**, accompanied by large numbers of *Interahamwe*, drove around Gisenyi town and identified to his group of militia the homes of Tutsis marked for elimination and other places where Tutsis sought refuge, such as the catholic church, Saint Fidèle College, the Convent in Gisenyi, the Nyundo Parish and other public buildings. **Bernard Munyagishari**, armed with guns and grenades and other traditional weapons, then committed attacks and ordered the members of the *Interahamwe* and instigated the members of the civilian population to attack Tutsis' homes and places where they were hiding and kill many of them. **Bernard Munyagishari** himself killed Tutsis in the course of those attacks. In some cases, **Bernard Munyagishari** and his *Interahamwe* took the Tutsis from their hiding-places to "*Commune Rouge*" where they killed them.

26. On or about 7 and 8 April 1994, on or about 1 May 1994 and on an unknown date between 7 April and 31 May 1994, **Bernard Munyagishari** committed attacks and ordered the members of the *Interahamwe* and instigated the members of the civilian population to attack the Tutsis who had sought refuge in the Nyundo parish in Gisenyi *prefecture*. The attackers, including **Bernard Munyagishari**, abducted from the parish approximately three hundred (300) Tutsis, took them to "*Commune Rouge*" and killed them.

27. During April 1994, after the death of President Juvénal Habyarimana on 6 April, **Bernard Munyagishari**, leading a group of *Interahamwe* including Omar Serushago and Hassan Ngeze, committed an attack on the Catholic Church in Gisenyi where large numbers of Tutsis had sought refuge. The *Interahamwe*, including **Bernard Munyagishari**, killed many Tutsis and wounded many others there. After killing Tutsis in the Catholic Church, **Bernard Munyagishari** and his *Interahamwe* transported the dead bodies to "*Commune Rouge*" where they buried them.

28. On or about 7 April 1994 in Gisenyi, **Bernard Munyagishari** committed the killing of a Tutsi man named Augustin Karimunda also known as Kalimunda who was an employee of the Brewery Company in Gisenyi.

29. On or about 10 April 1994, **Bernard Munyagishari** and Bagungo Augustin, the bourgmestre of Nyamyumba commune, were patrolling Gisenyi in a minibus. In the course of the patrol, a Tutsi man, Joel Safari, who had been gravely wounded in an earlier attack at his home, was abducted by the accused and put in the minibus which also held

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two Tutsi women. One of the women was the wife of one Rongin, coach of Rayon Sport, a local football club in Gisenyi. Shortly afterwards, **Bernard Munyagishari** and the bourgmestre Bagungo Augustin took Joel Safari and the two women to "*Commune Rouge*" where they were killed.

30. On an unknown date between 7 April and 17 July 1994, **Bernard Munyagishari** abducted Nyampeta also known as Munyampeta, a leading Tutsi businessman in Gisenyi, and then took him in a vehicle to "*Commune Rouge*" where he committed the killing of Nyampeta also known as Munyampeta.

31. On an unknown date in April 1994, **Bernard Munyagishari** with a group of *Interahamwe* including Omar Serushago and one Thomas, committed an attack on the Saint-Fidele College in Gisenyi. The *Interahamwe*, including **Bernard Munyagishari** used buses to take many Tutsis from the Saint-Fidele College to "*Commune Rouge*" and killed them and buried them there.

32. On an unknown date around 30 April 1994, **Bernard Munyagishari** with a group of *Interahamwe* including Omar Serushago, Thomas Mugiraneza and Hassan Gitoki, committed an attack on the Company Rwandex in Gisenyi where many Tutsis had sought refuge. Upon their arrival at the Company Rwandex, **Bernard Munyagishari** and some *Interahamwe* beat to death the watchman, a man of Tutsi origin, who tried to stop them. Afterwards, they abducted four Tutsis, two men and two women, who had been identified by the gendarmes present at the scene. **Bernard Munyagishari** and his *Interahamwe* then took the four Tutsis to "*Commune Rouge*" and killed them.

33. During the period from 7 April 1994 to 17 July 1994, **Bernard Munyagishari** created a special corps of young *Interahamwe* called the "*Ntarumikwa*", in order to rape and kill the Tutsi women and girls. By creating this group, **Bernard Munyagishari** aided and abetted its *Interahamwe* members in openly raping Tutsi women and girls before killing them. **Bernard Munyagishari** also aided and abetted his wife and fellow *Interahamwe*, Zainabou also known as Zainabu Mukundufite Faiziri, and a female group that she headed, to sexually torture female Tutsis before killing them.

Criminal Responsibility as a Superior

34. Pursuant to Article 6(3) of the Statute, the accused **Bernard Munyagishari** is responsible of the crime of **genocide or complicity in genocide** because specific criminal acts such as killing the Tutsis or causing serious bodily or mental harm to the Tutsis, including rape and other acts of sexual violence, were committed by the subordinates of the accused, and the accused knew or had reason to know that such subordinates were about to commit such acts before they were committed, or that such subordinates had committed such acts and the accused failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. These subordinates included *Interahamwe* such as Omar Serushago, Damas Karikumutima, one Gaca, one Michel and other persons. The particulars of the participation of the subordinates of the accused in

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the commission of these crimes are set out in paragraphs 35 through 42 of this indictment.

35. After **Bernard Munyagishari** murdered Augustin Karimunda also known as Kalimunda on or about 7 April 1994, one Gaca who was a subordinate of **Bernard Munyagishari** in the *Interahamwe* and his group of killers abducted Maria, the Tutsi wife of Karimunda also known as Kalimunda and took her to "*Commune Rouge*" and killed her and buried her there. **Bernard Munyagishari** knew or had reason to know that Gaca and his group of *Interahamwe* had committed the murder and failed to prevent the killing or to punish the perpetrators.

36. From 13 April 1994 until an unknown date in 1994, Omar Serushago, a subordinate of **Bernard Munyagishari**, supervised a very strategic roadblock "*La Corniche*". Many Tutsis who attempted to flee to the nearest neighboring country, Zaire, were arrested by Omar Serushago and his *Interahamwe* who took them to "*Commune Rouge*" where they were killed. **Bernard Munyagishari** knew or had reason to know that Omar Serushago and his group of *Interahamwe* had committed the killing, and failed to prevent the crime or to punish the perpetrators.

37. Between 7 and 10 April 1994, Omar Serushago, a subordinate of **Bernard Munyagishari** and a leader of the *Interahamwe* in Gisenyi, led a large group of *Interahamwe* to the Company Rwandex where the Tutsi employees of the company had sought refuge. Omar Serushago and his group of *Interahamwe* launched an attack against the refugees and killed about twenty Tutsis on the first day of the attacks. **Bernard Munyagishari** knew or had reason to know that Omar Serushago and his group of *Interahamwe* had committed the killing and failed to prevent the crime or to punish the perpetrators.

38. On or about 7 and 8 April 1994, on or about 1 May 1994 and on an unknown date between 7 April and 31 May 1994, the *Interahamwe* who were subordinates of **Bernard Munyagishari**, attacked the Tutsis who had sought refuge in Nyundo parish. The *Interahamwe* killed many refugees during those attacks. In the course of one of those attacks, approximately three hundred (300) Tutsis were abducted from the parish and paraded before the people of Gisenyi by *Interahamwe* who were subordinates of **Bernard Munyagishari** before they were taken to "*Commune rouge*" and killed. The *Interahamwe* accused those Tutsis of being "*Inkotanyi*". **Bernard Munyagishari** knew or had reason to know that his *Interahamwe* had committed the killing and failed to prevent the crime or to punish the perpetrators.

39. During the period from 7 April 1994 to 17 July 1994, rape, sexual assaults and other crimes of a sexual nature were widely and notoriously committed throughout Gisenyi. These crimes were perpetrated by *Interahamwe* who were subordinates of **Bernard Munyagishari**, against Tutsi women and girls. **Bernard Munyagishari** knew or had reason to know that his *Interahamwe* had committed such crimes and failed to prevent the acts or to punish the perpetrators.

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40. On or about 7 April 1994 in Gisenyi, *Interahamwe* who were the subordinates of **Bernard Munyagishari** killed a Tutsi woman called Kanzayire Solange, wife of Kamanzi Straton. After killing the woman, the *Interahamwe* looted the house of the couple. **Bernard Munyagishari** knew or had reason to know that his *Interahamwe* had committed the murder and failed to prevent the crime or to punish the perpetrators.

41. Between 7 April and 17 July 1994, **Bernard Munyagishari** abducted a young Tutsi student named Françoise, daughter of one Emmanuel, telling her that she was being protected from the massacres that were going on in Gisenyi at the time. In the three weeks she was held captive in the house of **Bernard Munyagishari**, two of **Bernard Munyagishari's** *Interahamwe*, one Damas and one Michel, raped the young Françoise. The girl was later killed and her body disposed at a place called "Mu Makoro" in Gisenyi. **Bernard Munyagishari** knew or had reason to know that his *Interahamwe* had raped and killed Françoise and failed to prevent the crimes or to punish the perpetrators.

42. During the period from 7 April to 17 July 1994, Zainaibou also known as Zainaibu Mukundufite Faiziri, the wife of **Bernard Munyagishari**, headed a female group of *Interahamwe* who were subordinates to **Bernard Munyagishari**. This group was notorious for sexually torturing Tutsi women before killing them. This group forced iron rods into the genitals of the Tutsi women. They also asked Tutsi women to produce milk from their bodies if they were true Tutsis. Those Tutsi women were then tortured to death. These acts constituted rape and **Bernard Munyagishari** knew or had reason to know that his subordinates had committed rape and failed to prevent the crime or punish the perpetrators.

COUNT 4: MURDER AS A CRIME AGAINST HUMANITY

The Prosecutor charges **Bernard Munyagishari** with **MURDER** as a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(a) of the Statute, in that on or between the dates of 1 January 1994 and 17 July 1994 throughout Rwanda, particularly in Gisenyi *prefecture*, with intent to kill members of the Tutsi racial or ethnic group or persons identified as Tutsis or presumed to support the Tutsis, **Bernard Munyagishari** was responsible individually and through the acts of his subordinates for the killing of such persons as part of a widespread or systematic attacks on the civilian population on racial and political grounds, as outlined in paragraphs 43 through 49 of this indictment.

CONCISE STATEMENT OF FACTS FOR COUNT 4

Individual Criminal Responsibility

43. Pursuant to Article 6(1) of the Statute, the accused, **Bernard Munyagishari**, is individually responsible for the crime of **MURDER AS A CRIME AGAINST HUMANITY** because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of this crime. With respect to the commission of this crime, **Bernard Munyagishari** ordered those over whom he had authority and instigated, aided and abetted those over whom he did not have authority.

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In addition, the accused willfully and knowingly participated in a joint criminal enterprise whose object, purpose and foreseeable outcome was the murder of the Tutsi racial or ethnic group throughout Rwanda, and of the Hutu opponents of ethnic division. To fulfill this criminal purpose, the accused acted with the bourgmestre of Nyamyumba Commune, Bagungo Augustin, and with the leaders and members of *Interahamwe* Omar Serushago, Damas Karikumutima, one Michel, one Gaca, Zainabou also known as Zainabu Mukundufite Faiziri and other participants, all such actions being taken either directly or through co-perpetrators, for at least the period of 1 January 1994 through 17 July 1994. The particulars that give rise to his individual criminal responsibility are set forth in paragraphs 44 through 46 of this indictment.

44. On 7 April 1994 in Gisenyi, **Bernard Munyagishari** committed the killing of a Tutsi man named Augustin Karimunda also known as Kalimunda who was an employee of the Brewery Company in Gisenyi.

45. On or about 10 April 1994, **Bernard Munyagishari** and Bagungo Augustin, the *bourgmestre* of Nyamyumba commune, were patrolling Gisenyi in a minibus. In the course of the patrol, a Tutsi man, Joel Safari, who had been gravely wounded in an earlier attack at his home, was abducted by the accused and put in the minibus which also held two Tutsi women. One of the women was the wife of one Rongin, coach of Rayon Sport, a local football club in Gisenyi. Shortly afterwards, **Bernard Munyagishari** and the bourgmestre took Joel Safari and the two women to "*Commune Rouge*" where they were killed.

46. On an unknown date from 7 April to 17 July 1994, **Bernard Munyagishari** abducted Nyampeta also known as Munyampeta, a leading Tutsi businessman in Gisenyi and then took him in a vehicle to "*Commune Rouge*" where he committed the killing of Nyampeta also known as Munyampeta.

Criminal Responsibility as a Superior

47. Pursuant to Article 6(3) of the Statute, the accused **Bernard Munyagishari**, is responsible of the crime of **MURDER AS A CRIME AGAINST HUMANITY** because specific criminal acts were committed by subordinates of the accused and the accused knew or had reason to know that such subordinates were about to commit such acts before they were committed or that such subordinates had committed such acts and the accused failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. These subordinates included leaders and members of the *Interahamwe* such as Omar Serushago, Bagungo Augustin, Damas Karikumutima, one Michel, one Gaca, Zainabou also known as Zainabu Mukundufite Faiziri, and other participants. The particulars of the participation of the accused's subordinates in the commission of the crime are set out in paragraphs 48 and 49 of this indictment.

48. After **Bernard Munyagishari** had murdered Augustin Karimunda also known as Kalimunda on or about 7 April 1994, one Gaca, a subordinate of **Bernard Munyagishari** in the *Interahamwe* and his group of killers abducted Maria, the Tutsi wife of Karimunda

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also known as Kalimunda, and took her to "Commune Rouge" and killed her and buried her there. **Bernard Munyagishari** knew or had reason to know that his group of *Interahamwe* had committed the murder and failed to prevent the killing or to punish the perpetrators.

49. On or about 7 April 1994 in Gisenyi, *Interahamwe* who were the subordinates of **Bernard Munyagishari** killed one Tutsi woman called Kanzayire Solange, wife of Kamanzi Straton. After killing the woman, the *Interahamwe* looted the house of the couple. **Bernard Munyagishari** knew or had reason to know that his *Interahamwe* had committed the murder and failed to prevent the killing or to punish the perpetrators.

COUNT 5: RAPE AS A CRIME AGAINST HUMANITY

The Prosecutor charges **Bernard Munyagishari** with **RAPE AS A CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(g) of the Statute, in that on or between the dates of 1 January 1994 and 17 July 1994 throughout Rwanda, **Bernard Munyagishari** with the intention of raping members of the Tutsi racial or ethnic group or persons identified as Tutsis, was responsible for the rape of Tutsis as part of a widespread or systematic attack against that civilian population on ethnic or racial grounds.

CONCISE STATEMENT OF FACTS FOR COUNT 5

Individual Criminal Responsibility

50. Pursuant to Article 6(1) of the Statute, the accused, **Bernard Munyagishari**, is individually responsible for the crime of **RAPE AS A CRIME AGAINST HUMANITY** because he planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation or execution of this crime. In addition, the accused willfully and knowingly participated in a joint criminal enterprise whose object, purpose and foreseeable outcome was the rape of women of the Tutsi racial or ethnic group throughout Rwanda, and of Hutu opponents of ethnic division. To fulfill this criminal purpose, the accused acted with leaders and members of the *Interahamwe* such as Damas Karikumutima, one Michel, Zainabou also known as Zainabu Mukundufite Faiziri, and other participants, all such actions being taken either directly or through co-perpetrators, for at least the period of 1 January 1994 through 17 July 1994. The particulars that give rise to his individual criminal responsibility are set forth in paragraphs 51 and 52 of this indictment.

51. During the period from 7 April 1994 to 17 July 1994, **Bernard Munyagishari** created a special corps of young *Interahamwe* called the "Ntarumikwa", in order to rape and kill the Tutsi women. By creating this group, **Bernard Munyagishari** aided and abetted its *Interahamwe* members in raping Tutsi women and girls before killing them. **Bernard Munyagishari** also aided and abetted his wife and fellow *Interahamwe*, Zainabou also known as Zainabu Mukundufite Faiziri, and a female group that she headed in sexually torturing and raping Tutsi women. This group forced irons rods into the genitals of the Tutsi women and mutilated their bodies.

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52. Between 7 April and 17 July 1994, **Bernard Munyagishari** abducted a young Tutsi student named Françoise, daughter of one Emmanuel, telling her that she was being protected from the massacres that were going on in Gisenyi at the time. For three weeks she was held captive in the house of **Bernard Munyagishari**. **Bernard Munyagishari** raped Françoise. The girl was later killed and her body disposed of at a place called "*Mu Makoro*" in Gisenyi.

Criminal Responsibility as a Superior

53. Pursuant to Article 6(3) of the Statute, the accused **Bernard Munyagishari**, is responsible of the crime of **RAPE AS A CRIME AGAINST HUMANITY** because specific criminal acts were committed by subordinates of the accused and the accused knew or had reason to know that such subordinates were about to commit such acts before they were committed or that such subordinates had committed such acts and the accused failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. These subordinates included leaders and members of the *Interahamwe* such as Damas Karikumutima, one Michel, Zainabou also known as Zainabu Mukundufite Faiziri, and other unknown participants. The particulars of the participation of the accused's subordinates in the commission of the crime are set out in paragraphs 54 through 56 of this indictment.

54. During the period from April 1994 to July 1994, rape, sexual assaults and other crimes of sexual nature were widely and notoriously committed throughout Gisenyi. These crimes were perpetrated by *Interahamwe* who were subordinates of **Bernard Munyagishari**, against Tutsi women and girls. **Bernard Munyagishari** knew or had reason to know that his *Interahamwe* had committed such crimes and failed to prevent the acts or to punish the perpetrators.

55. Between 7 April and 17 July 1994, **Bernard Munyagishari** abducted a young Tutsi student named Françoise, daughter of one Emmanuel, telling her that she was being protected from the massacres that were going on in Gisenyi at the time. In the three weeks she was held captive in the house of **Bernard Munyagishari**, two of **Bernard Munyagishari's** *Interahamwe*, Damas Karikumutima and one Michel, raped Françoise. The girl was later killed and her body disposed of at a place called "*Mu Makoro*" in Gisenyi. **Bernard Munyagishari** knew or had reason to know that his *Interahamwe* had raped Françoise and failed to prevent the rape or to punish the perpetrators.

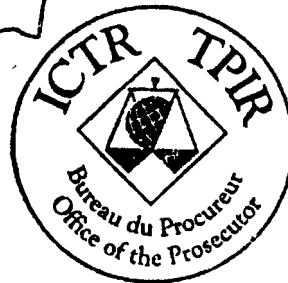
56. Between 7 April and 17 July 1994, **Bernard Munyagishari's** wife named Zainabou also known as Zainabu Mukundufite Faiziri, headed a female group of *Interahamwe* that was subordinate to **Bernard Munyagishari** and notorious for sexually torturing Tutsi women before killing them. This group forced iron rods into the genitals of the Tutsi women. Those Tutsi women were then killed. These acts constituted rape and **Bernard Munyagishari** knew or had reason to know that his subordinates had committed such crimes and failed to prevent the acts or to punish the perpetrators.

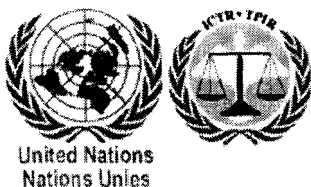
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The acts and omissions of **Bernard Munyagishari** detailed herein are punishable pursuant to articles 22 and 23 of the Statute.

Signed at Arusha, Tanzania, this ⁰⁸ day of September 2005.


Hassan Bubacar Jallow
Prosecutor





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu
	<input type="checkbox"/> OIC, JLSD P. Besnier	<input type="checkbox"/> OIC, JPU C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / The Hague K. K. A. Afande R. Muzigo-Morrison
From:	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input checked="" type="checkbox"/> Prosecutor's Office JAMES ARGUIN (names)
			<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Bernard Munyagishari		Case Number: ICTR-2005-89-I
Dates:	Transmitted: 03 October 2011		Document's date: 03 October 2011
No. of Pages:	11	Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
Title of Document:	PROSECUTOR'S REQUEST FOR THE REFERRAL OF THE CASE OF BERNARD MUNYAGISHARI TO RWANDA PURSUANT RULE 11 BIS OF THE RULES OF PROCEDURE AND EVIDENCE		
Classification Level:		TRIM Document Type:	
<input type="checkbox"/> Ex Parte		<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties	
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input checked="" type="checkbox"/> Submission from parties	
<input type="checkbox"/> Confidential		<input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars	
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities	

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English French Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

English French Kinyarwanda

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<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
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III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: